



EMPLOYMENT TRIBUNALS

Claimant: Mr R Stack

Respondents: (1) Royal Mail Group Limited
(2) Angard Staffing Solutions Limited

HELD in Leeds – Hybrid, claimant in person and respondent’s representative and witness remotely by CVP video link ON: 31 May, 1 and 2 June 2023

BEFORE: Employment Judge Lancaster
Members: M Lewis
K Lannaman

REPRESENTATION:

Claimant: In person
Respondents: Mr R Chaudhry (solicitor advocate)

JUDGMENT having been sent to the parties on 14 June 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are now provided, taken from the transcript of the oral decision that was delivered immediately on conclusion of the case:

REASONS

The issues and the law

1. The claimant Mr Richard Stack worked for the second respondent Angard Staffing Solutions Limited which provides postal workers to work for the Royal Mail, the first respondent. He was employed by Angard from a period towards the end of February 2020 or early March 2020, the date is not entirely clear, and he was dismissed on 11 March 2022.

2. So although at an earlier preliminary hearing it had been identified that there may be an issue as to whether he had the requisite two years' continuous employment to bring a complaint of unfair dismissal, it is now conceded that he did, albeit only just.
3. That is the first of the three complaints that were identified by Employment Judge Knowles at the preliminary hearing held on 13 January of this year.
4. On a claim of unfair dismissal we are of course looking at section 98 of the Employment Rights Act 1996. It is in the first instance for the respondents to establish what was the reason or if more than one the principal reason for termination, but in fact we have no difficulty at all in concluding in this case that the respondents have easily done that and that the reason for dismissing Mr Stack was in relation to conduct, which is a potentially fair reason.
5. Although at various stages Mr Stack has asserted that he believes he was dismissed for having parked in a disabled parking space, it is quite clear on the evidence we have heard and read that the reason in fact related to his alleged conduct towards an employee of Royal Mail, a Miss Lynn Eastwood. That was categorised on the notice of suspension as "multiple swearing" towards that person, and characterised on the invitation to the dismissal hearing as "abusive conduct". "Abusive conduct" within the relevant policies is classified potentially as gross misconduct. "Abusive" in this context we are quite satisfied should be given its common interpretation as relating to offensive language, and it is not necessary to import any other definition such as that of the American Psychological Society which Mr Stack has referred to at various stages.
6. Having established that the reason for dismissal was indeed related to that conduct, the question, applying the long established authority of **British Home Stores v Burchell [1980] ICR 380**, is whether looking at all the circumstances - and these are the issues as identified by Judge Knowles: did the respondents genuinely believe that he had committed that misconduct, were there reasonable grounds for holding that belief and at the time had they carried out a sufficient investigation, was the dismissal procedurally fair and was the sanction termination within the range of reasonable responses? The relevant authorities establish that provided an employer can be shown in the opinion of the Tribunal to have acted within the range of reasonable responses open to a reasonable employer in the same circumstances the Tribunal cannot, and indeed must not substitute its own view and that will be a fair dismissal.
7. The other two allegations we have to consider, as again identified at the preliminary hearing of Judge Knowles, are firstly a complaint of direct disability discrimination. That is under section 13 of the Equality Act: the employer must not treat an employee less favourably because of a protected characteristic, in this case disability. than they would treat somebody else.
8. The alleged less favourable treatment in this case is the dismissal of the claimant. Though it was established at the start of this hearing because this complaint is brought against both respondents, Royal Mail and Angard, that relates not only to the actual dismissal which can only be affected by his legal employer Angard, but also to the circumstances leading to that dismissal in so far as they fall within the responsibility of Royal Mail.
9. For the purposes of establishing whether that was less favourable treatment because of disability, the Tribunal is concerned with the reason why dismissal took

place. For purposes of comparison it must look at somebody, in this case hypothetically, where there is no material difference between their circumstances and that of Mr Stack apart from the fact of his disability and whether that person would have been treated differently and more favourably in the same circumstances as had they arisen in their case. And of course we also bear in mind that under section 136 of the Equality Act on the provisions as to burden of proof if there are any facts from which we could in the absence of an explanation conclude that there has been a breach of the Equality Act we will find that a discriminatory unless the respondent shows on no grounds whatsoever did they in fact dismiss the claimant because of his disability.

10. The third complaint is a complaint of harassment which is under section 26 of the Equality Act, and that is of unwanted conduct related to disability which either has the purpose or the effect of violating Mr Stack's dignity or creating an adverse environment for him. That adverse environment is more specifically identified, within the context of section 26, as an intimidating, hostile, degrading, humiliating or offensive environment for him. And in looking at the harassment claim we remind ourselves of how the elements must be considered as set out in the case of **Richmond Pharmacology v Dhaliwal [2009] ICR 724**, though dealing with the earlier similar provisions under the Race Relations Act. Was there unwanted conduct, did that conduct in question either have the purpose or the effect of violating the dignity or creating an adverse environment and was that conduct related to disability? The Act prescribes that we must have regard to the perception of Mr Stack himself in determining whether it did have that effect, the other circumstances of the case and whether it is reasonable for the conduct found to have had that alleged adverse effect upon his environment at work.
11. That unwanted conduct was identified at the preliminary hearing as an: "Attempt to enforce a non-existent policy by questioning the claimant on whether he had a blue badge when seeking to park in a disabled parking space." It is now conceded in submissions that we are not looking at a case where there was any purposing of the proscribed effect on the part of the alleged harasser, Ms Eastwood and that is a sensible concession on the part of the claimant. It is quite clear that was not her intention, and of course she did not and could not have known at the time that the claimant was in fact disabled. So we are looking primarily at the second limb of that case, that is whether notwithstanding it may not have been purposed, did it in fact have the proscribed effect.
12. So those are the three legal claims we are having to consider. Mr Stack is admittedly disabled. Unfortunately he has been diagnosed with multiple sclerosis (MS). That was from 2001 though the diagnosis as from 2005 is "extremely benign relapsing remitting multiple sclerosis". By definition he meets the criteria for disability within the Equality Act because MS is one of those few complaints that is necessarily and automatically a disability. However having said that, Mr Stack does not complain that he has any mobility issues as a result of his disability and he does not and never has had and does not consider he needs a blue badge, that is a disabled parking permit that applies primarily on public land.

The facts: unfair dismissal and discriminatory dismissal

13. Dealing firstly then with the relevant facts in relation to the complaint of dismissal, these are that on 12 January 2022 the claimant had been assigned a shift to start at 6 o'clock working from the Leeds Royal Mail Centre. He drove to work and when

he arrived he parked in one of the marked disabled parking bays. There are 12 such bays at the Royal Mail Centre, though we have not heard direct evidence it does not appear to be at all in dispute that they are appropriately marked as disabled spaces. However equally it is common ground that there is no further signage to indicate that use of those spaces is limited to people who are not only disabled but who also possess a blue badge. And although Mr Stack is right that the blue badge scheme does not necessarily have any impact upon private land, the landowner may - and indeed we have evidence that other authorities, for instance British Rail, do - designate their disabled parking spaces as solely for the use of those who have also obtained a blue badge from the local authority.

14. When Mr Stack used that parking space, another employee in fact employed by Royal Mail directly, that is Ms Lynn Eastwood, was also looking for a disabled parking space and she does possess a blue badge. When Mr Stack took that last remaining space before her, she remonstrated with him to the extent that she asked a question "do you have a blue badge" or words to the effect of "you need a blue badge to park here" and that resulted in an altercation. Following that Ms Eastwood reported the matter to a manager Rachel Scott and Ms Scott also - because the claimant had given his name to Ms Eastwood - called him away from work and spoke to him. She indeed then sent him away and he was suspended from that point because of the allegations made by Ms Eastwood.
15. Those initial contacts by Rachel Scott are recorded on an incident report form. It appears to have been made near-enough contemporaneously because it was received shortly afterwards by Angard. Ms Scott being a manager directly employed by the Royal Mail sent this on to Angard Staffing, who of course employed the claimant, by the following day the 13th. So within 24 hours of the incident it was completed and that is the first record of what either Ms Eastwood or indeed the claimant have said about this incident.
16. It must be said that there are some problems about the way the matter is recorded on that incident report form. These are not least that Ms Scott records that having spoken to the claimant she sent him home due to his being under the influence of alcohol and wanted to wait for more formal questioning until he was not under the influence of alcohol.
17. There has been no explanation as to why that statement is recorded on the incident form. There appears to be no suggestion that Mr Stack was in any way intoxicated at this point. Indeed within her more substantive narrative of the outline of the incident, Ms Scott makes no reference to that. And indeed it appears to be entirely inconsistent with that statement because she says that she had sent him off to cool off and indeed escorted him to his car. Mr Stack sensibly makes the point that if he had indeed been perceived as being drunk or under the influence of alcohol the manager would not have endorsed his leaving in his own vehicle.
18. There are also a number of typing errors in the narrative. Also unfortunately Mr Stack's name is misrecorded and there is no indication as to whether this is intended to be a full verbatim account of what either Mr Stack or Ms Eastwood said to Ms Scott on this occasion. But having said that it is nonetheless a well nigh contemporaneous account of the initial report of the incident. Within that document in particular Ms Scott records that Ms Eastwood had asked the claimant if he'd got a blue badge as it was not displayed, and he replied according to her "how do you know I'm not fucking disabled" to which she replied "you don't speak to me like that, all I asked if you had a blue badge you must display it". She asked for his name

and said she was going to report him. It is then said that Mr Stack shouted “fuck off women” about five or six times whilst Ms Eastwood was walking towards reception.

19. When Mr Stack was interviewed it is recorded that he stated he did not swear, he stated he got out of a car, was asked if he had a blue badge, he replied no and it is recorded that no other words were exchanged. It is also recorded -and there is no dispute about this - that in a pause in that discussion with Ms Scott the claimant Mr Stack had used his mobile phone to access information about the blue badge scheme and sought to identify to Ms Scott his initial finding that it did not apply to private land.
20. He also objected to some comments that Ms Scott made about requirement of disabled people and their ability to obtain a blue badge and described that as being “an ableist statement” discriminatory towards him as a person with a disability.
21. On the basis of that incident report the suspension was confirmed. Two letters went out from Ms Salima of HR at Angard. The first of those repeats the allegation that the claimant was sent home because he was intoxicated, but almost immediately that was apparently replaced with a more accurate statement that he had been sent home or suspended because of multiple swearing towards a colleague. But again there has been no explanation as to why the initial allegation was apparently withdrawn so it is not known who Ms Salima spoke to, how she ascertained that that was no indeed what was intended and nor, as we say, has there been any explanations as to why it was recorded on the form in the first place.
22. So the claimant was invited to submit his response to the allegations in writing and he initially did that on 13 January. At this point he was answering the allegations both of intoxication and of swearing multiple times. He gave his account that he had parked in the disabled parking bay but intended to go and eat a sandwich before starting work and he was approached by somebody, clearly Ms Eastwood, and she demanded -in what he says, a day later, was a tone that he perceived at the time to be aggressive (that is in the sense of self righteous indignation) - that I show her my disabled parking badge. He said he did not have that and he stated there that he was a medically diagnosed person with a disability covered by the Equality Act ,that there was no reason why he should be discriminated against and advised her that she was potentially in breach of the Act. It was at that point that he says his precise recollection becomes vague and unclear in his head.
23. Following the correction letter from Ms Salima, the claimant was invited to submit an amended response dealing only with the allegations of multiple swearing. Unfortunately in the phrase of that letter Ms Salima expressed in terms that he had indeed been abusive, and certainly Mr Stack understood that as suggesting that she had formed a view. However in context it simply appears to us that she is seeking to draw his attention to the fact that he should concentrate on the allegations of the incident regarding another colleague and not the allegation of intoxication. So he then prepared a further letter of 15 January, at this point drawing on his own expertise in psychology. He seeks to analyse potential reasons for his behaviours. At that point identifies that in asserting his understood rights he may have expressed himself in a manner unacceptable to others and makes other points as were alluded to particularly drawing in his own understanding of the American Psychological Association definition of abuse, and how he understood that as relating to the conduct of Ms Eastwood towards him.

24. There was then some confusion as to how long the suspension was intended to last and it was not until 9 February, so nearly a month after the event, that the claimant was in fact invited to a fact finding interview although Ms Salima had previously indicated that would happen shortly. From subsequent exchanges carried out at the appeal stage it seems clear that although the claimant was only invited to come into work for 9 February and not told that would expressly be for a fact finding meeting, it was at the initiative of the manager Mr Imran Khan that he was then called out to attend such a meeting. Mr Khan having identified that he had not been called to account earlier, as he more properly should have been. therefore took the first opportunity when the claimant returned to work.
25. That was on 9 February. When he was asked to give his account of the events on the 12th January Mr Stack simply referred back to his earlier letters of 13th and 15th. It was put to him that he had used the phrase “fuck off women” about five or six times and in using the plural Mr Khan was clearly reading from the initial incident report where that was how it was quoted by Ms Scott. Though again, in context, it seems relatively clear that that is a typing error and indeed it is important to observe moving ahead to a later stage when she was re-interviewed that Ms Eastwood used the phrase in the singular when describing how she had been verbally abused. The claimant’s reaction to that was that he would not have used the word “women” but he did not elaborate to explain he was simply taking issue with the reference to a plural, which he thought would have been inherently more offensive that if he had only said “fucking woman” (because it would suggest derogatory comments toads all women as a class). He declined to speculate as to what impact or effect any bad language may have had on Ms Eastwood, and when asked if he thought swearing would have been appropriate brought in reference to advice from West Yorkshire Police as to whether swearing may constitute grounds for bringing a criminal charge. At that stage the claimant also asserted for the first time that in response to what he perceived to be the inappropriate conduct from Ms Eastwood he had entered into an autonomic nervous system reaction, “flight, fight or freeze” mode and said he could imagine the more she repeated the threat against his well-being the more he would have assertively required her to leave him in peace.
26. Ms Eastwood was called to a fact finding meeting on 11 February and she again gave her account: “I have a disabled badge, I couldn’t find a spot, a man pulled into spot before me, I got out and said to the gentleman excuse me do you have a blue badge. He responded by shouting, waving his arms around and then swearing at me saying fucking woman its not your business. You don’t know anything about me. I told him he shouldn’t be in a disabled spot if he doesn’t have a blue badge. He continued to repeat fucking woman at me. I then parked my car and started walking towards the building. He was still saying fucking woman at this point and as we approached the zebra crossing I asked for his name and said I was going to report him. “ She then said she saw somebody else, now known to be Mr Neil Coleman ,and asked him “did you hear that?” And she described how she felt unsafe as a result.
27. Mr Coleman having been identifies was also interviewed in the course of this process and that was on 8 March. He remembered at that point being approached by Ms Eastwood and being asked “did you hear him swear at me?” But although he identified that Mr Stack was shouting at Ms Eastwood he did not say that he had heard any of the actual words.

28. That investigation then, having identified a potential disciplinary offence, led to the meeting conducted by Mr James Fox on 9 March at which the claimant was dismissed.
29. Initially it had been proposed that Ms Scott herself should conduct this preliminary meeting and that was scheduled for 16 February, but because of the complaints brought against her that was deemed inappropriate so it was assigned to Mr Fox. Again it is also clear that it was intended that that meeting which was held remotely should first be heard on 8 March but there was a technical problem in that both were waiting on the phone unable to connect with the other so it was re-arranged for the 9th.
30. We do observe that in that meeting conducted by Mr Fox and indeed in his subsequent decision, while somewhat terse, he made one clear substantive finding which was that Mr Stack had sworn at a colleague on at least one occasion. And that certainly was a permissible conclusion given the evidence of Ms Eastwood and given the claimant's concession that in his autonomic nervous response he "may" have used offensive language and was not able to say whether or not he actually had.
31. However, beyond that it is lacking in attention to detail, though Mr Fox does record the additional information given to him by Mr Stack which includes a recorded allegation that the complainant Ms Eastwood "walked in the direction of the Leeds Mail Centre and I (erroneously) followed". In his conclusions Mr Fox, as we have said, decided he did swear on at least one occasion and he also says that, following from the evidence by Mr Coleman, it is also his opinion that "you were acting in an abusive and aggressive way towards the colleague by shouting at and following her and there has been no show of remorse and therefore I am satisfied that you were abusive towards a colleague. Cannot guarantee this would not happen again and therefore considered dismissal with the appropriate action."
32. As we say he addressed very briefly some of the points that had been made by Mr Stack in a letter prior to that meeting on 8 March when Mr Stack was querying whether Ms Eastwood had any authority to act as a parking attendant, questioned why there were no notes of the initial discussions with Ms Scott if they were then reflected in her incident report, and raised it again the question as to why there had been the apparently incorrect reference to hm being intoxicated.
33. The claimant appealed that decision and that was heard by Ms Rebecca Reese. She interviewed the claimant and gave him the opportunity to correct the notes. She also herself interviewed Ms Eastwood and she also of course reviewed all the earlier material. That was specifically described as a re-hearing.
34. It does appear likely that Mr Fox had not had all the documentation in particular the letters from Mr Stack of 13th and 15th. They were not included in his bundle sent prior to the disciplinary meeting and the fact that within the body of his decision he refers to Mr Stack not having expressed any remorse does suggest that he does not give attention to those parts of those letters where, at least to some extent, the claimant does acknowledge a potential fault and expressed sadness at what had happened if it had caused offence in a form of apology. But Ms Reese did have those documents and it was a full re-hearing. And within her decision letter she addresses the facts and also the complaints raised by Mr Stack on appeal. Essentially her conclusion was, as we have heard and accept from her giving evidence, that she preferred and believed the account of Ms Eastwood because

she considered it to be more consistent. Her specific findings were therefore that it was Mr Stack who on having been approached and asked if he had a blue badge, or words to that effect, immediately retaliated in an aggressive manner. She also in the course of her own investigations had expressly put to Mr Eastwood the allegation that she had been told by Mr Stack that he was a disabled person. She had denied that and Ms Reese formed the view that although it was not necessary to make a final determination she thought that evidence was more likely to be correct. So beyond that initial verbal abuse she then also found as a fact that there had been a repeated use of a phrase such as “fucking woman”. She looked again at the issue as to whether or not the claimant had followed Ms Eastwood in the sense that he deliberately targeted her. In the light of Ms Eastwood’s own evidence that did not appear to be the case, so she did not rely upon that. Though, as we say it is clear that the claimant had “followed” her in the sense they had both gone in the same direction although then diverting to different entrances to the mail centre, and he appeared to indeed acknowledge that in his interview with Mr Fox. She also clearly considered the claimant’s account as to how he believed that the matter had been instigated and escalated by Ms Eastwood’s actions which he described as abuse of him and whether that amounted to mitigation, and she concluded that it did not justify the way in which he reacted to her. As we say she expressly considered the various other matters raised. Addressing the issue of the delay before the meetings were held she considered that they did not introduce any unfairness into the process and she also specifically looked at the question about whether or not any remorse had been shown. She did analyse what Mr Stack had actually said in his letters, but her conclusion was that whilst it was evident he had expressed some regret she did not believe he had accepted responsibility for his actions which he still maintained were justified as the result of poor behaviour from Ms Eastwood so it was not his fault, therefore she did not consider this to be sincere and genuine remorse.

Conclusions: unfair dismissal

35. Having recited that history admittedly, not in full but we hope sufficiently to identify the key points that were in the information before Ms Reese we come to this conclusion on the unfair dismissal claim.
36. As we have said the respondents quite clearly dismissed for a reason relating to conduct. That is the abuse towards Ms Eastwood, the multiple swearing. We are quite satisfied looking at the careful and reasonable content of her outcome letter and also having heard evidence that Ms Reese, whose decision rectified any deficiencies in the shortness of Mr Fox’s earlier decision, genuinely believed that the claimant had spoken abusively to Ms Eastwood. In particular in the first altercation where she asked him if he had a blue badge but also on other occasions. Although she was not able to say whether she had made a specific finding as to whether it was the five or six times referred to by Ms Eastwood it was certainly more than one other occasion.
37. We are quite satisfied looking at that history of the various accounts given and available to Ms Reese at this stage that she had reasonable grounds for coming to that conclusion. It is suggested that she should not have made that decision because it was uncorroborated evidence from Ms Eastwood, but she records her rationale for preferring that evidence, in particular that there was a contemporaneous complaint. It is in part corroborated by Mr Coleman’s hearing of the shouting and the general consistency of Ms Eastwood’s account as to the

orders of events. Of course there are some variations in the wording she records, there are also some matters that are not specifically addressed, such as whether she parked up or when she parked up, but as against that there is the claimant's initially recorded observation that it was simply being asked if he had a blue badge and his saying no, and then taking into account his saying that he did remember some things having been said specifically but others his autonomic response had kicked in so he could not remember what he had or had not said, but he conceded he may have used offensive language.

38. We are also satisfied that looking at the situation in the round Ms Reese by this stage have certainly on behalf of the respondent -and she was acting as a duly authorised Royal Mail employee on behalf of the employer Angard - carried out such investigation as was necessary in the circumstances. Both participants had been spoken to, Mr Stack had been given the opportunity to put his factual account. The one potential witness had been spoken to and any other matters are not necessary to carry out a fair investigation. Although the claimant has now said that there should have been a timeline, or that there should have been further matters explored, they would not reasonably add to the substance of the case. He had arrived shortly before he was due to start his shift at 6 o'clock, the incident clearly happened over a short time, there was a dispute of facts as to what had or not been said but Ms Reese explains her rationale for preferring one person's evidence as against another's, and in those circumstances we consider that at every stage of that investigation and decision, particularly Ms Reese was acting within the band of reasonable responses. She was entitled to form the view that she did even though we accept that Mr Stack vehemently disagrees with that.

Conclusion: direct discrimination

39. Following on from that finding, it is relatively easy to also dismiss the complaint of direct discrimination. The reason why the claimant was dismissed was not because he was disabled. He was not treated less favourably than somebody materially in the same circumstances would have been treated; and hypothetically that would be somebody who was not disabled but who had parked in a disabled bay had been challenged about that and had then responded in the way recorded and found by Ms Reese. The most that can be said that it is may be a "but for" causation. We are prepared to accept that the claimant would not have parked in the disabled bay had he not in fact met the definition of disability and therefore that was the start of the chain of events. But that is not an answer to the question as to the "reason why" a dismissal then took place. He was dismissed because of his conduct, and on no grounds whatsoever because he was a disabled person.

The facts: harassment

40. So that leaves the one matter which has caused us more time in our deliberations which is the complaint of harassment. This is in relation to the challenging by Ms Eastwood of the claimant having parked in the disabled bay. And in this instance we do have to, following **Richmond Pharmacology**, make findings as to what the conduct actually was and to draw inferences to whether that then meets the definition in section 26.
41. We have a statement from Ms Eastwood but she has not given evidence. That means necessarily we cannot attach the same degree of weight to her evidence as if she had been cross-questioned and had stood up to that challenge in cross-examination. However equally it does not mean that we disregard her statement.

It is evidence she has been prepared to make a statement knowing it will be used in a tribunal, effectively in a court of law, and from that evidence from what we have heard from the claimant himself and looking at the contemporaneous records, we come to the following conclusions as to what happened.

42. As we have said, we are prepared to accept that the claimant parked in the disabled bay because he met the definition of someone who was disabled, and because there was no specific signage prohibiting him parking there without a blue badge. We accept that is what he did and why he thought he was entitled to do so. Ms Eastwood did have a blue badge. It is quite clear to us reading the papers that her understanding was that the designated spaces within the Royal Mail car park were for those like her that had a local authority blue badge. Her understanding was that a compliance with the requirement to provide disabled access Royal Mail were acting under the direction of Leeds City Council so that the same regime would apply. That may not be correct. But it was confirmed by her union representative at the meeting that it had been enforced in workplace discussions, certainly with permanent employees of Royal Mail, that the expectation was that those with a blue badge should display it and there is also indication in the papers that that was a stance endorsed by management who would seek to enforce that provision and prevent people without a blue badge parking in those spaces and thereby denying them to those who were entitled. Although the claimant refers to this as being the application and the enforcement of a “non-existent policy”, the reality is that everybody within Royal Mail, particularly Ms Eastwood who had been involved in any discussions about the provision of car parking spaces was aware that priority was to be given to those with a blue badge and they should display it.
43. So, she having had issues in the past, we accept that Mr Stack’s initial response on 13 January, that is that he believed the complainant Ms Eastwood exhibited a degree of righteous indignation, may well be correct. But it is common ground through every single account that either party has ever given about this incident, that the first approach was an innocuous query as to whether he had a blue badge and why he was not displaying it. The precise words cannot be clearly ascertained.
44. We then accept the consistent evidence of Ms Eastwood in every account she has given about this incident, that the immediate response to that enquiry was that the claimant Mr Stack became abusive and used foul language towards her. And again while the precise words may not now be ascertained after this length of time, Ms Eastwood’s account that he said words to the effect of “fucking woman its not your business, you don’t know anything about me or how do you know I’m not fucking disabled” is on balance of probabilities what the claimant did say to her. And in those circumstances we are also prepared to make a finding of fact that, as Ms Eastwood has consistently denied, he did not say in terms “I am medically disabled, I meet the definition of the Equality Act or you may be in breach of the act by your actions.” His immediate response was rather than to express himself in the measured tone that he no doubt would like to think he did, he responded aggressively.
45. However the extremity of that action does nonetheless suggest that the claimant’s perception was that this was unwanted conduct that was indeed somehow related to his disability. Related to disability for the purposes of section 26 is a wide ranging phrase. The fact that it was in relation to an incident involving the use of a disabled parking bay, and the fact that in the claimant’s own mind there is some support for his contention that he believed this was challenging his status as a disabled person

simply because that was not perhaps immediately apparent and because he did not have a blue badge, may get him over the first part of the test where we must have regard to his individual subjective perception.

46. On balance given the circumstances in which that first exchange took place, we consider the situation most plausibly to be that Ms Eastwood parked up her car because she had not been able to get into the car parking space that Mr Stack had just taken, and that is when she first spoke to him, and that when this violent reaction on his part ensued. But she will then have parked up her car, whether in a disabled bay or elsewhere, and there was a further interaction between them. That was on the way back to the mail centre and for the first part of that journey will have involved them taking the same route before they diverged. That is what Ms Eastwood recounted as being the place where this happened on the way to the zebra crossing and that is where she says she saw Mr Coleman and questioned him as to whether he had heard what had been said, whether he had heard the swearing towards her. And it is in that context that we find that Ms Eastwood then asked for the claimant's name and indicated that she would report him. So at this point what weighed upon her mind was a combination of the fact that he had parked in a disabled bay without displaying a badge, but also that he exhibited an abusive reaction towards her.
47. At that point, whatever she said is not obviously in any way related to the claimant's actual disability but is related to the way in which he responded. So even if the claimant's perception that this had the effect of creating an adverse environment for him that was indeed related to disability, looking at all the circumstances and in particular asking ourselves the objective question of whether it could reasonably be construed as having that effect, we determine that this does not amount to harassment.
48. Ms Eastwood of course did not have any specific role or responsibility as a car park attendant but equally it is not fair to characterise her, as the claimant has, as acting as "a vigilante parking attendant". Her initial response was perfectly reasonable we find. And the claimant's characterisation of her as his "believing he was in the presence of a lunatic" is again gross hyperbole: she was entitled to question whether somebody who did not display a blue badge was taking a space that ordinarily should be reserved for those with mobility issues, and she did so, we find, in an appropriate fashion but she was met with the response which was out of all proportion.
49. The further exchanges we find were not as a result of escalation on the part of Ms Eastwood such that the claimant was entitled to rely upon his exhibiting an autonomic nervous response. We make no findings as to whether that is genuinely true or not, but certainly we consider it is an exaggeration to claim that he could properly describe himself as being "repulsed" by Ms Eastwood's approach to him. Indeed we find alternatively that escalation of matters was on his side; his continuing to use abuse, and to describe somebody as we find he did as a "fucking woman" on more than one occasion is highly offensive.
50. So for these reasons all three complaints before us are necessarily dismissed.

Employment Judge Lancaster

Date 17th August 2023

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